

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing it to Construct, Own, Operate,)
Control, Manage and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood -)
Montgomery 345 kV Transmission Line)

File No. EA-2014-0207

**DISSENTING OPINION OF COMMISSIONER DANIEL Y. HALL IN THE
REPORT AND ORDER**

I respectfully dissent.

In the Report and Order issued on July 1, 2015, a majority of the Commission denied the application of Grain Belt Express Clean Line LLC (“Grain Belt Express”) for a certificate of convenience and necessity (“CCN”). The majority concluded that Grain Belt Express failed to meet its burden of proof to demonstrate that the project described in its application to construct and operate a high voltage, direct current transmission line across Missouri (“Project”) was necessary or convenient for the public service. I disagree, and would grant that application.

I believe the majority misapplied Missouri law, failed to properly consider the evidence presented and ignored overarching policy considerations. Moreover, the majority adopted an overly narrow and parochial interpretation of the public interest, and in so doing, missed an opportunity to build “a bridge to our energy future.”¹ Simply put, this ruling puts Missouri on the wrong side of history.

¹ Tr. 10:28–29.

When making a determination of whether an applicant or project is convenient or necessary, the Commission applies five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant's proposal must be economically feasible; and
- e) The service must promote the public interest.²

The majority concluded that Grain Belt Express failed to present sufficient evidence to demonstrate need, economic feasibility, and public interest.

The majority based its conclusions regarding need and economic feasibility primarily upon the testimony of Michael Proctor, who expressed the opinion that the Project was not needed and not economically feasible because Ameren Missouri, as the sole Missouri investor-owned electric utility in MISO, could obtain lower-cost wind energy from areas within MISO or through the purchase of renewable energy credits. While the majority takes great stock in Dr. Proctor's testimony, I found the testimony of other witnesses to be more persuasive.

Michael Goggin and Matt Langley testified in support of the Grain Belt Express Project. Goggin and Langley have extensive experience regarding the development of wind energy and transmission and grid integration issues.³ Those witnesses testified credibly that, contrary to the opinion of Dr. Proctor, wind energy from within MISO is not the lowest-

²*In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

³ Ex. 700, Goggin rebuttal, p. 1; Ex. 875, Langley rebuttal, p. 2-3.

cost option for utilities needing renewable energy. Wind energy generated in the northwestern MISO area, where new wind development would occur, is not a viable alternative to the Grain Belt Express Project because this area is experiencing severe transmission congestion that is causing limited wind deliverability and widespread wind curtailment.⁴ Since wind energy from within MISO is not the lowest-cost option, then the analysis by witness David Berry shows that wind energy generated in Kansas and transmitted to Missouri via the Project could fulfill a need for Missouri utilities looking to purchase renewable energy.⁵ Missouri courts have stated that in evaluating an application for a CCN, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost”.⁶ Under this standard, Grain Belt Express has clearly demonstrated that there is a need for the Project.

Similarly, this analysis also shows that the Project is economically feasible.⁷ Grain Belt Express presented a levelized cost of energy analysis from witness Berry to show that the cost to bring wind energy from western Kansas to Missouri and eastward using the Project is the lowest-cost resource option compared to Missouri wind, coal generation, combined cycle gas and solar power.⁸ Grain Belt Express has presented sufficient evidence to show that its Project is economically feasible.

⁴ Ex. 701, Goggin surrebuttal, p. 5-6; Langley surrebuttal, p. 3-5; Transcript, Vol. 14, p. 947.

⁵ Ex. 118, Berry direct, p. 11-26

⁶ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

⁷ Ex. 118, Berry direct, p. 11-26.

⁸ Ex. 120, Berry surrebuttal, p. 19-22.

It is worthwhile noting that the original *Tartan* case also involved a situation where the company investors, not the ratepayers, bore the economic risk of the proposed project. In concluding that the Tartan project was viable, that Commission said that “Tartan bears most of the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs.”⁹ Grain Belt Express similarly presented credible evidence that the company and its investors, not Missouri ratepayers, bear the risks associated with recovering the costs of the Project.¹⁰ The Grain Belt Express shareholders are willing to risk \$2.2 billion of their own money, of which approximately \$500 million would be invested in Missouri, because they believe that the Project is economically feasible.¹¹ Since there is no risk to Missouri ratepayers and evidence demonstrated that the Project would actually reduce electric rates,¹² I would prefer to allow Grain Belt Express to build the Project and have faith in the competitive free market system to determine whether the Project is feasible.

The majority also concluded that the Project does not promote the public interest because any actual benefits are outweighed by the burdens on affected landowners. Those landowners who appeared before the Commission during local public hearings were sincere in their concerns about the Project, and I am sympathetic with those concerns. However, many of these concerns could have been addressed though conditions placed upon the CCN. And, it is the Commission’s responsibility to balance the interests of the affected landowners with the overall interests of the public, which, as correctly noted by the

⁹ *In re Tartan Energy*, 3 Mo.P.S.C. 3d at 189.

¹⁰ Ex. 120, Berry surrebuttal, p. 49; Transcript, Vol. 15, p. 1297-98.

¹¹ Ex. 100, Skelly direct, p.8.

¹² Ex. 118, Berry direct, p. 4.

majority, means that some of the public may suffer adverse consequences for the total public interest.¹³ Individual rights must sometimes give way to the rights of the public.¹⁴

The evidence in the case convinced me that the Project will create both short-term and long-term benefits to ratepayers and all the citizens of the state. In my view, the benefits of the Project to the entire state of Missouri far outweigh the interests of the individual landowners. The majority decision failed to adequately consider important public policy considerations that weigh in favor of granting the Grain Belt Express application. Public policy must be found in a constitutional provision, a statute, a regulation promulgated pursuant to statute, or a rule created by a governmental body.¹⁵ Missouri law has established such a policy through the law on renewable energy standards that encourages the use of renewable energy resources.¹⁶ This Commission stated in a recent Report and Order that an important policy goal is encouraging renewable energy, and that “[r]enewable energy generation provides a direct benefit to the public because it can reduce the problems associated with conventional sources of electricity, such as coal, oil, natural gas, and nuclear.”¹⁷

Grain Belt Express presented substantial evidence that its Project would provide a number of benefits to Missouri, including access to low-cost wind energy to provide

¹³ *In the Matter of Sho-Me Power Electric Cooperative’s Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

¹⁴ *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

¹⁵ *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).

¹⁶ Section 393.130, RSMo Supp. 2013.

¹⁷ *In the Matter of Union Electric Company d/b/a Ameren Missouri’s Voluntary Green Program/Pure Power Program Tariff Filing, Report and Order*, p. 14, File No. EO-2013-0307, issued April 24, 2013.

cost-effective compliance with renewable energy standards, reduction in wholesale and retail electricity prices, the addition of construction, manufacturing and operations jobs for Missouri workers and business, and a reduction in the need to generate electricity from fossil-fueled power plants which would reduce carbon dioxide, sulfur dioxide, nitrous oxide and mercury emissions.¹⁸ This last benefit will be vitally important for Missouri in the near and foreseeable future as our utilities face large reductions in their carbon emissions that are being imposed by the U.S. government in the EPA rule under 111(d) of the Clean Air Act that was issued on August 3, 2015. This rule will require Missouri to cut its carbon emissions rate by about 37% in the electric sector¹⁹, causing enormous challenges for utilities in this state. By ignoring the imminent effects of this rule on Missouri utilities, the majority has prevented our utilities from having timely access to another valuable source of renewable energy.

As a state, as a nation, and as a planet, we are witnessing a long-term comprehensive movement towards renewable energy, including wind energy. I believe that wind energy holds great promise as a source of affordable, reliable, safe, and environmentally-friendly energy. While people, businesses, governmental entities, and other organizations may disagree about the extent of the speed, nature and benefits of such a movement, no one can doubt its existence. As a Commission, we can either facilitate the movement towards renewable energy or temporarily hinder it. It was my hope that this case would be our opportunity to facilitate it, but, unfortunately, the majority chose a different path.

¹⁸ Ex. 118, Berry direct, p. 4.

¹⁹ Under the final Clean Power Plan, Missouri must reduce its CO₂ emissions rate (lbs/Net MWH) from the 2012 baseline rate of 2,008 to a 2030 rate of 1,272, which is a 36.7% reduction.

As the Report and Order in this case notes, Grain Belt Express has the option to file a new application for a CCN at any point if it eventually gathers information it feels would make a better case for the Project or for a new Project. I encourage Grain Belt Express to do so. While the Commission has come down on the wrong side of history here, I have hope that, with time, the Commission can right this wrong and do its part in creating a more sustainable energy future for all Missourians.

For the reasons set forth above, I would grant Grain Belt Express a certificate of convenience and necessity.

Respectfully submitted,



Daniel Y. Hall

Dated at Jefferson City, Missouri,
on this 13th day of October, 2015.